

In the Matter of Certificate of Service No. E-330086
Issued to: HERBERT ROY HUTCHINS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

520

HERBERT ROY HUTCHINS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 16 March, 1951, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Certificate of Service No. E-330086 issued to Herbert Roy Hutchins upon finding him guilty of negligence based upon four specifications alleging in substance that while serving as Chief Steward on board the American SS CARROLL VICTORY under authority of the document above described, on or about 14 September, 1950, while said vessel was in a domestic port, he failed to check the dry stores coming aboard the vessel as a result of which the stores were found short by approximately \$800.00; on or about 24 September, 1950, while said vessel was at sea, he failed to stow stores properly resulting in spoilage of approximately 400 dozen eggs; from 14 September through 30 December, 1950, he failed to perform his duties by permitting compartments and food lockers to be in an unsanitary condition; and from 14 September through 30 December, 1950, he failed to perform his duties by not carrying out the orders of the Master to clean up the unsanitary conditions existing in his department. A second charge and specification alleging incompetency were found "not

proved" by the Examiner.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by a union patrolman of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Master of the CARROLL VICTORY together with certified copies of extracts from the official log of the ship and an authenticated copy of a Consular report.

In defense, Appellant offered in evidence several documentary exhibits including a statement signed by 24 members of the unlicensed personnel of the CARROLL VICTORY concerning Appellant's qualifications as a Chief Steward.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specifications and entered the order suspending Appellant's Certificate of Service No. E-330086 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority for a period of one year; six months of the suspension to become effective immediately and the final six months to be on eighteen months' probation commencing at the expiration of the outright suspension.

From that order, this appeal has been taken, and it is urged that Appellant was on the dock checking all of the stores which were taken aboard during the course of which shortages were found and replaced; that it would have been impossible for Appellant to have checked stores on the dock and to oversee the stowing of the stores in the hold; that he had requested the Chief Engineer to put a drip pan under the fan in the chill box to protect the eggs; that he had told the Master that the food lockers needed defrosting and

scrubbing but the Master refused to pay overtime for this purpose; that the agreement between the shipping company and the union was not lived up to by the Master; and that Appellant has been going to sea since 1918 without any action having been taken against him before this time.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

From 2 September, 1950, through 30 December, 1950, Appellant was serving as Chief Steward on board the American SS CARROLL VICTORY and acting under authority of his Certificate of Service No. E-330086 while said vessel was on a foreign voyage.

On or about 14 September, 1950, dry stores intended to last approximately 150 days were taken aboard at Mobile, Alabama. It was Appellant's responsibility to check these stores, sign for them and see that they were properly stowed aboard the ship. A subsequent inventory check disclosed that Appellant had signed for approximately \$800 worth of goods which never came aboard. Appellant later admitted this shortage to the Master stating that he had not had sufficient time to check all the stores. It was also brought to the attention of the Master that 420 dozen eggs had become dampened and subsequently spoiled due to the fact that they had been stowed below the fan blowers in the chill box and water dripped on them. All of these eggs had to be disposed of after Appellant failed to carry out instructions to separate the good eggs which had not yet become moldy at the time they were inspected by the Master on 24 September, 1950.

On numerous occasions from 14 September, 1950, through 30 December, 1950, Appellant was reprimanded by the Master about the dirty and unsanitary conditions existing in the galley, food lockers, chill boxes and other storage spaces under the care of the steward's department; and Appellant was repeatedly ordered by the Master to remedy these conditions. In spite of Appellant's promises to the contrary, conditions became worse, instead of better, as is fully set forth in the Examiner's decision. As a result, the Master reduced Appellant to the rating of Chief Cook on 30 December, 1950, to become effective on the following day.

OPINION

The testimony of the Master as to the filthy and unsanitary condition of the compartments under the responsibility of the Chief Steward is fully supported by the report of the investigation conducted by the American Vice Consul at Kobe, Japan, a few days after Appellant's demotion. Although conducted for the specific purpose of determining whether there was justification for Appellant's reduction in rating, the Consular Report presents substantial evidence to support the allegations as to the negligent and unsatisfactory manner in which Appellant performed his duties as Chief Steward. It is also brought out in this report that Appellant's demotion was approved of by the other members of the crew after they had been informed by the Vice Consul of the surrounding circumstances for the action taken by the Master.

The proof supporting the first two specifications is substantial, reliable and probative. The uncontradicted statements by the Master are corroborated by the log entries and were accepted by the Examiner. Appellant's explanations on appeal are not sufficient to refute the case made out against him.

CONCLUSION AND ORDER

In view of Appellant's prior clear record for a period of more than thirty years at sea, the Order of the Examiner dated 16 March, 1951, is hereby modified to read as follows:

That Certificate of Service No. E-330086 and all other valid certificates of service, merchant mariner's documents and/or licenses issued to Herbert Roy Hutchins, Z-53933-D2, be and the same are hereby suspended for a period of ONE YEAR. Said suspension, as to the final nine months, shall not become effective, provided no charge is proved under Section 4450 of the Revised Statutes, as amended, for acts committed by him within twenty-one (21) months of the termination of the three (3) months' outright suspension.

If this probation is violated the order for which probation was granted shall become effective with respect to all certificates and licenses herein involved and also any certificate or license acquired by you during the period of

probation, at such time as designated by any Hearing Examiner finding the violation and may be added to or form a part of any additional order which is entered by such Hearing Examiner.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 11th day of October, 1951.

***** END OF DECISION NO. 520 *****

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